REMARKS

The indicated allowability of claim 13 is greatly appreciated. The missing formula has been re-inserted into claim 13.

Claim 16 has been amended, as proposed by the Examiner, to remove the non-statutory subject matter rejection.

On the merits, the Examiner acknowledged that the combined teachings of Giroux and Qiu failed to teach "a greater of two bandwidth demand estimates giving an estimated worst case effective bandwidth demand", but contended that this missing limitation was taught by Davis in Fig. 3 and in col. 9, lines 27-52. The Examiner therefore concluded that it would have been obvious to arrive at the claimed invention by combining Giroux and Qiu with Davis.

Claims 9 and 16 refer to an "estimated worst case effective bandwidth demand", but Davis is *silent* about bandwidth demand. Davis, in the excerpt identified by the Examiner, discloses a long-term error comparison signal that indicates whether a slow-filtered sampling interval error count exceeds a long-term error *threshold*, and further discloses a short-term error comparison signal that indicates whether a fast-filtered sampling interval error count exceeds a short-term error *threshold*.

These two error comparison signals disclosed by Davis are compared with their corresponding thresholds, but *not* with each other. The Examiner, however, concluded that the one of the error comparison signals that exceeds its corresponding threshold is the "estimated worst case effective bandwidth demand". Applicant respectfully submits that this conclusion reached by the Examiner is *not correct* for at least the following two reasons:

1)   Davis neither discloses nor suggests comparing the long-term error comparison signal with the short-term error comparison signal. Davis discloses comparing individually each of the two error comparison signals with their corresponding **thresholds**. By contrast, claim 9 clearly recites: "*the greater of the two demand estimates giving the estimated worst case effective bandwidth demand*". In order to determine which one of two values is the greater one, the two values must be compared with each other, and not against their thresholds.

2)   Davis is very clear that his disclosure is all about short and long term error counts (see the title, claims and description). By applying the teaching of Davis to bandwidth demand without any support in the disclosure, the Examiner reads more from Davis than is disclosed therein.

Moreover, Giroux and Qiu are not concerned with error counts. A person skilled in the art, when having access to Giroux and Qiu and to Davis, would not add Davis to the combined teachings of Giroux and Qiu, because Davis deals with a problem that is **not** discussed at all by Giroux and Qiu.

However, even if the Examiner insists on combining these three references, the combination would lead to a solution in which long-term and short-term error counts are compared with their respective thresholds. This may lead to data rate renegotiation if at least one of the two error counts exceeds its associated threshold. This solution, however, is different from the one recited in claims 9 and 16 of the present invention, because it still fails to teach "a greater of two bandwidth demand estimates giving an estimated worst case effective bandwidth".

Allowance of the pending claims is respectfully requested.

Wherefore, a favorable action is earnestly solicited.

Respectfully submitted,

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